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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,313	11/28/2000	Anthony D. Gonzalez	682.0021USU	6496

7590 11/12/2002

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 11/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.	524313	Applicant(s)	Genza G et al	
Examiner	OS		Group Art Unit	616
	McCloskey			8

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status**

Responsive to communication(s) filed on 7/18/02

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

**Disposition of Claims**

Claim(s) 1-33 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-33 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

**Application Papers**

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119 (a)-(d)**

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

**Attachment(s)**

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other \_\_\_\_\_

**Office Action Summary**

Receipt is acknowledged of Amendment of 7/8/02.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12, 16-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Dohara-5055299.

The rejection of record is maintained. The instant claims are to general conceptual classed of ingredients, and are seen, absent identification of specific compounds, as met by the prior art, providing compounds, ingredients and components construed to equate with applicants generalizations. Dohara provides the composition—the active blended into the aerosol composition (column 2, lines 9-29), applicable to humans (mammals—column 1, 2<sup>nd</sup> paragraph)—however, the constraints of Dohara's composition do not have any patentable bases for future intended use which preclude exposure to or application to any particular being, item or environment of use, inclusive of humans. The VOC component is ether, at 10-80%, (column 2, line 45-48) preferably 30-60. This includes the instant about 55% threshold. As to whether the specification calls alcohol an VOC or non-VOC component; this examiner finds absent claiming the alcohol, Dohara's use can be seen as meeting the instant claim; however Dohara specifically cites propylene glycol as a solvent, which is applicant's non-VOC (column 2, line 49-51). Applicant's new claims are also met; applicant fails to differentiate between suspension and dispersion. Dohara provides clear, homogeneous composition s (Examples)—solutions. The aqueous phase and organic phases of

Dohara's composition lead one to see them as suspensions. The components added—fragrances, surfactants—favor this form and include description as dispersions.

Claims 1-9, 16, 20-22, 24, 26, 27, 32, 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Mailander et al 330391.

The rejection of record is maintained.

The form of the composition is not distinguished by applicant between dispersion/suspension—Mailander provides this—an emulsion would constitute either or both (column 3, line 70-73). Neither is any patentable weight given to future intended use—the composition could be applied to humans. They are intended as sprays for other mammals—livestock (column 13, F) and for human inhalants (Example 4).

Claims 1-11, 13, 15, 16, 20-24, 26, 27, 32 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Vlasblam-5565208.

The rejection of record is maintained.

Examiner apologizes for the various typos, and appreciates applicant's reference to Vlasborn (Vlasbom).

However, again, we see no clear distinction in form.

Claims 1-33 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chaussee--4970220.

The rejection of record is maintained. Again, form is seen as met here—lotions, emulsions constitute dispersions, and suspensions. See column 2, lines 59-61—solution, emulsion, spray, lotion and cream meet, the instant terminology.

Claims 1-24, 26, 27, 32, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewart 5916541 in view of Vlasblom 5565208 or Chaussee—4970220, and Mailander et al—3303091.

The rejection of record is maintained. Again form is seen as met here—lotions, emulsions constitute dispersions, and suspensions.

Applicant's arguments filed 7/8/02 have been fully considered but they are not persuasive. Applicant's amendments are appreciated, and 112 rejections are withdrawn. But examiner finds no distinction presented between the newly added forms, no variance from the prior art of record, no patentable basis for consideration of intended use on humans—nothing is seen as precluding such use at the times the prior art patents were published, from a toxicity concern and absent recitation in the claims of specific compounds, the prior art is seen as anticipating or *prima facie* obvious of the instant invention as claimed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 305-4556 for regular communications and 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy: mv  
October 24, 2002



NEIL S. LEVY  
PRIMARY EXAMINER